

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA No. 563 of 2006.

Date of decision: 21.12.2006

Khushi Ram

..... Appellant

Versus

Julfi Ram

..... Respondent

Coram

The Hon'ble Mr. Justice Surjit Singh, J.

Whether approved for reporting ?¹

For the appellant : Mr. J.R. Thakur, Advocate,

For the respondent : Mr. Lovnesh Kanwar, Advocate.

Surjit Singh, J. (Oral)

Heard and gone through the records.

The respondent-plaintiff, Julfi Ram, filed a suit for possession of 5 marla area being part of khasra No. 760 as depicted by min khasra No. 760/1 in the *tatima* filed with the plaint, alleging that he was owner of khasra No. 760 measuring 19 marlas, but appellant-defendant had made an encroachment on a portion thereof to the extent of 5 marlas.

Appellant-Defendant claimed that he had acquired title to the 5 marlas area, in question, by adverse possession. Plea of limitation was also raised. Some other objections, like the plaintiff being estopped to file the suit by his acts and conduct, the suit being not maintainable, plaintiff having no cause of action and the suit being not properly valued for the purpose of court fee and jurisdiction were also raised. The trial court held that the plaintiff was the owner of the land in question. Defendant's plea of

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

adverse possession did not find favour with the trial court. Other issues based on preliminary objections were not pressed. Consequently, the suit was decreed. The appeal filed by the appellant-defendant in the court of District Judge stands dismissed.

Submissions made by the learned counsel for the appellant are two fold. According to him, the evidence has not been appreciated by the two courts below in lawful a manner and that during the pendency of the litigation, the *Karukan* (dimensions) of the property of the plaintiff had been changed by the consolidation authorities, but the report of the said authorities was not allowed to be produced. His second contention is that the suit was barred by time and this aspect of the matter has also not been gone into by the two courts.

The two courts below have returned concurrent finding, based on the appreciation of the evidence both oral and documentary. There was hardly any need for leading any evidence regarding the Karukans of the property of the plaintiff, when the defendant himself admitted that the plaintiff was the lawful owner of the property at one point of time but he had been divested of the said right, on account of his having acquired title of adverse possession. The trial court has returned the finding in favour of the plaintiff on the basis of the entries in the revenue papers and the oral evidence adduced before it. Similarly, the plea of adverse possession raised by the appellant-defendant has been rejected, after properly and correctly appreciating the material on record.

As regards the second submission, limitation for suit for possession based on title begins to run from the date when the possession of the defendant becomes adverse to the plaintiff, as per Article 65 of the Limitation Act. In the present case finding is that the appellant-defendant's possession has not ripened into title. Therefore, it

does not lie in the mouth of the appellant-defendant to say that the suit was barred by time. No other point has been urged. Since no substantial question of law arises, the appeal is dismissed.

CMP Nos. 1012/2006 & 1013/2006

Infructuous.

(Surjit Singh , J.

December 19, 2006

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